

ASSEMBLY BILL

No. 2813

Introduced by Assembly Member Bloom

February 19, 2016

An act to amend Section 628 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2813, as introduced, Bloom. Juvenile offenders: dual-status minors.

Existing law requires a probation officer, upon delivery of a minor who has been taken into temporary custody, to immediately investigate the circumstances of the minor and the facts surrounding the minor being taken into custody and to immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless evidence before the court demonstrates that continuance in the home is contrary to the child's welfare, as specified.

This bill would require a probation officer, upon delivery of a minor who has been taken into temporary custody and who is a dependent of the juvenile court, or who appears to come within the description of a dependent of the court, to immediately release the minor to the custody of the child welfare services department or his or her current foster parent or other caregiver, except as specified. The bill would also prohibit the probation officer, when deciding whether to detain a minor who is a dependent of the court, from considering specified information, including, among others, the minor's status as a dependent of the juvenile court. By increasing the duties on local child welfare services departments, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 628 of the Welfare and Institutions Code
2 is amended to read:

3 628. (a) (1) Upon delivery to the probation officer of a minor
4 who has been taken into temporary custody under the provisions
5 of this article, the probation officer shall immediately investigate
6 the circumstances of the minor and the facts surrounding his or
7 her being taken into custody and shall immediately release the
8 minor to the custody of his or her parent, legal guardian, or
9 responsible relative unless it can be demonstrated upon the
10 evidence before the court that continuance in the home is contrary
11 to the minor's welfare and one or more of the following conditions
12 exist:

13 ~~(1)~~

14 (A) The minor is in need of proper and effective parental care
15 or control and has no parent, legal guardian, or responsible relative;
16 or has no parent, legal guardian, or responsible relative willing to
17 exercise or capable of exercising that care or control; or has no
18 parent, legal guardian, or responsible relative actually exercising
19 that care or control.

20 ~~(2)~~

21 (B) The minor is destitute or is not provided with the necessities
22 of life or is not provided with a home or suitable place of abode.

23 ~~(3)~~

24 (C) The minor is provided with a home which is an unfit place
25 for him or her by reason of neglect, cruelty, depravity or physical
26 abuse by either of his or her parents, or by his or her legal guardian
27 or other person in whose custody or care he or she is entrusted.

28 ~~(4)~~

1 (D) Continued detention of the minor is a matter of immediate
2 and urgent necessity for the protection of the minor or reasonable
3 necessity for the protection of the person or property of another.

4 ~~(5)~~

5 (E) The minor is likely to flee the jurisdiction of the court.

6 ~~(6)~~

7 (F) The minor has violated an order of the juvenile court.

8 ~~(7)~~

9 (G) The minor is physically dangerous to the public because of
10 a mental or physical deficiency, disorder or abnormality.

11 (2) *The probation officer's decision to detain a minor who is a*
12 *dependent of the juvenile court pursuant to Section 300 shall not*
13 *be based on any of the following:*

14 (A) *The minor's status as a dependent of the juvenile court.*

15 (B) *A determination that continuance in the minor's current*
16 *placement is contrary to the minor's welfare.*

17 (C) *The child welfare services department's inability to provide*
18 *a placement.*

19 (3) *Notwithstanding paragraph (1), upon delivery to a probation*
20 *officer of a minor who is a dependent of the juvenile court pursuant*
21 *to Section 300, or who appears to come within the description of*
22 *Section 300, and who has been taken into temporary custody under*
23 *the provisions of this article, the probation officer shall*
24 *immediately release the minor to the custody of the child welfare*
25 *services department or his or her current foster parent or other*
26 *caregiver unless it can be demonstrated upon the evidence before*
27 *the court that continued detention is a matter of immediate*
28 *necessity for the protection of the person of another.*

29 (b) If the probation officer has reason to believe that the minor
30 is at risk of entering foster care placement as defined in paragraphs
31 (1) and (2) of subdivision (d) of Section 727.4, ~~then~~ the probation
32 officer shall, as part of the investigation undertaken pursuant to
33 subdivision (a), make reasonable efforts, as described in paragraph
34 (5) of subdivision (d) of Section 727.4, to prevent or eliminate the
35 need for removal of the minor from his or her home.

36 (c) In any case in which there is reasonable cause for believing
37 that a minor who is under the care of a physician or surgeon or a
38 hospital, clinic, or other medical facility and cannot be immediately
39 moved is a person described in subdivision (d) of Section 300, the
40 minor shall be deemed to have been taken into temporary custody

1 and delivered to the probation officer for the purposes of this
2 chapter while he or she is at the office of the physician or surgeon
3 or that medical facility.

4 (d) (1) It is the intent of the Legislature that this subdivision
5 shall comply with paragraph (29) of subsection (a) of Section 671
6 of Title 42 of the United States Code as added by the Fostering
7 Connections to Success and Increasing Adoptions Act of 2008
8 (Public Law 110-351). It is further the intent of the Legislature
9 that the identification and notification of relatives shall be made
10 as early as possible after the removal of a youth who is at risk of
11 entering foster care placement.

12 (2) If the minor is detained and the probation officer has reason
13 to believe that the minor is at risk of entering foster care placement,
14 as defined in paragraphs (1) and (2) of subdivision (d) of Section
15 727.4, then the probation officer shall conduct, within 30 days, an
16 investigation in order to identify and locate all grandparents, adult
17 siblings, and other relatives of the child, as defined in paragraph
18 (2) of subdivision (f) of Section 319, including any other adult
19 relatives suggested by the parents. The probation officer shall
20 provide to all adult relatives who are located, except when that
21 relative's history of family or domestic violence makes notification
22 inappropriate, within 30 days of the date on which the child is
23 detained, written notification and shall also, whenever appropriate,
24 provide oral notification, in person or by telephone, of all the
25 following information:

26 (A) The child has been removed from the custody of his or her
27 parent or parents, or his or her guardians.

28 (B) An explanation of the various options to participate in the
29 care and placement of the child and support for the child's family,
30 including any options that may be lost by failing to respond. The
31 notice shall provide information about providing care for the child,
32 how to become a foster family home or approved relative or
33 nonrelative extended family member as defined in Section 362.7,
34 and additional services and support that are available in
35 out-of-home placements. The notice shall also include information
36 regarding the Kin-GAP Program (Article 4.5 (commencing with
37 Section 11360) of Chapter 2 of Part 3 of Division 9), the
38 CalWORKs program for approved relative caregivers (Chapter 2
39 (commencing with Section 11200) of Part 3 of Division 9),
40 adoption and adoption assistance (Chapter 2.1 (commencing with

1 Section 16115) of Part 4 of Division 9), as well as other options
2 for contact with the child, including, but not limited to, visitation.
3 When oral notification is provided, the probation officer is not
4 required to provide detailed information about the various options
5 to help with the care and placement of the child.

6 (3) The probation officer shall use due diligence in investigating
7 the names and locations of the relatives pursuant to paragraph (2),
8 including, but not limited to, asking the child in an age-appropriate
9 manner about relatives important to the child, consistent with the
10 child's best interest, and obtaining information regarding the
11 location of the child's adult relatives.

12 (4) To the extent allowed by federal law as a condition of
13 receiving funding under Title IV-E of the federal Social Security
14 Act (42 U.S.C. Sec. 670 et seq.), if the probation officer did not
15 conduct the identification and notification of relatives, as required
16 in paragraph (2), but the court orders foster care placement, the
17 probation officer shall conduct the investigation to find and notify
18 relatives within 30 days of the placement order. Nothing in this
19 section shall be construed to delay foster care placement for an
20 individual child.

21 SEC. 2. To the extent that this act has an overall effect of
22 increasing the costs already borne by a local agency for programs
23 or levels of service mandated by the 2011 Realignment Legislation
24 within the meaning of Section 36 of Article XIII of the California
25 Constitution, it shall apply to local agencies only to the extent that
26 the state provides annual funding for the cost increase. Any new
27 program or higher level of service provided by a local agency
28 pursuant to this act above the level for which funding has been
29 provided shall not require a subvention of funds by the state nor
30 otherwise be subject to Section 6 of Article XIII B of the California
31 Constitution.